

No. 2432

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,  
Plaintiff in Error,  
VS.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Eastern District of Washington,  
Northern Division.

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Filed

JUL 31 1914

F. D. Monckton,  
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys of Record.**

EDWARD J. CANNON, GEORGE M. FERRIS  
and CHARLES E. SWAN, Old National Bank  
Building, Spokane, Washington,  
Attorneys for Plaintiff in Error.

FRANCIS A. GARRECHT, U. S. Attorney, Fed-  
eral Building, Spokane, Washington, and  
OTIS B. KENT, Special Assistant United States  
Attorney, Washington, D. C.,  
Attorneys for Defendant in Error. [1\*]

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,  
Defendant.

**Complaint.**

Now comes the United States of America, by  
Oscar Cain, United States Attorney for the Eastern  
District of Washington, and brings this action on  
behalf of the United States against the Northern  
Pacific Railway Company, a Corporation organized  
and doing business under the laws of the State of  
Wisconsin, and having an office and place of busi-  
ness at Cle Elum, in the State of Washington; this

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\*Page-number appearing at foot of page of original certified Record.

action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

FOR A FIRST CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma, in the State of Washington, and [2] Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Engineer and employee, to wit, C. W. Hoffman, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:30 o'clock A. M. on said date to the hour of 11:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic.



Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

FOR A SECOND CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma, in the State of Washington, and Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Fireman and employee, to wit, J. E. Rainey, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:30 o'clock A. M. on said date to the hour of 11:00 o'clock P. M. on said date. [3]

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the vio-

lation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

FOR A THIRD CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma, in the State of Washington, and Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Conductor and employee, to wit, R. E. Walsh, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date to the hour of 10:30 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic. [4]

Plaintiff further alleges that by reason of the vio-

lation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

FOR A FOURTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma in the State of Washington, and Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Brakeman and employee, to wit, Thomas Kilcoyne, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 10:30 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the vio-

lation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

FOR A FIFTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in [5] interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma, in the State of Washington, and Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Brakeman and employee, to wit, A. T. Feilds, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date to the hour of 10:30 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the vio-



lation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

FOR A SIXTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, [6] beginning at the hour of 5:00 o'clock A. M. on January 10, 1912, upon its line of railroad at and between the stations of Tacoma, in the State of Washington, and Cle Elum, in said State, within the jurisdiction of this court, required and permitted its certain Brakeman and employee, to wit, J. H. Wilson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date to the hour of 10:30 o'clock, on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. Extra, drawn by its own locomotive engine No. 1507, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the vio-

lation of said Act of Congress, said defendant is liable to plaintiff in the sum of Five Hundred Dollars.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of Three Thousand Dollars and its costs herein expended.

(Signed) OSCAR CAIN,  
United States Attorney.

[Endorsements]: Complaint. Filed in the U. S. District Court for the Eastern District of Washington. October 7, 1912. W. H. Hare, Clerk. By S. M. Russell, Deputy. [7]

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Answer.**

I.

Defendant for answer to plaintiff's complaint admits the first paragraph of said complaint.

II.

Answering plaintiff's first cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its engineer, C.

W. Hoffman, to be or remain on duty as such engineer for a longer period than sixteen consecutive hours or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, C. W. Hoffman, was on said date employed for a longer period of time than sixteen consecutive hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said first cause of action contained whether as herein stated or otherwise.

### III.

Answering plaintiff's second cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its fireman, J. E. Rainey, to be or remain on duty [8] as such fireman for a longer period than sixteen consecutive hours or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, J. E. Rainey, was on said date employed for a longer period of time than sixteen consecutive hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said second cause of action contained whether as herein stated or otherwise.

### IV.

Answering plaintiff's third cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its conductor, R.

E. Walsh, to be or remain on duty as such conductor for a longer period than sixteen consecutive hours or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, R. E. Walsh, was on said date employed for a longer period of time than sixteen consecutive hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said third cause of action contained, whether as herein stated or otherwise.

## V.

Answering plaintiff's fourth cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its brakeman, Thomas Kilcoyne, to be or remain on duty as such brakeman for a longer period than sixteen consecutive hours or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, Thomas Kilcoyne, was on said date employed for a longer period of time than sixteen consecutive [9] hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said fourth cause of action contained, whether as herein stated or otherwise.

## VI.

Answering plaintiff's fifth cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its brakeman, A.



T. Feilds, to be or remain on duty as such brakeman for a longer period than sixteen consecutive hours, or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, A. T. Feilds, was on said date employed for a longer period of time than sixteen consecutive hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said fifth cause of action contained, whether as herein stated or otherwise.

## VII.

Answering plaintiff's sixth cause of action defendant admits paragraph one thereof. Defendant denies that on the 10th day of January, 1912, or at any time, it required or permitted its brakeman, J. H. Wilson, to be or remain on duty as such brakeman for a longer period than sixteen consecutive hours or that it in any manner violated the act referred to in said complaint, and it expressly denies that defendant's said employee, J. H. Wilson, was on said date employed for a longer period of time than sixteen consecutive hours, and save as admitted herein defendant expressly denies each and every allegation, averment, matter and thing in said sixth cause of action contained, whether as herein stated or otherwise.

(Signed) EDWARD J. CANNON,  
Attorney for Defendant. [10]

State of Washington,  
County of Spokane,—ss.

C. R. Lonergan, being first duly sworn, upon oath deposes and says: That he is General Agent of and

for the Northern Pacific Railway Company, a corporation, defendant in the above-entitled action, and has his office as such General Agent and resides in the city of Spokane, Washington; that he makes this affidavit for and on behalf of said corporation; that he has read the above and foregoing answer, knows the contents thereof and the same is true as he verily believes.

(Signed) C. R. LONERGAN.

Subscribed and sworn to before me this 31st day of January, 1913.

[Notarial Seal]

(Signed) JOHN M. CANNON,  
Notary Public in and for the State of Washington,  
Residing at Spokane, Wash.

[Endorsements]: Due service of within answer by receipt of a true copy thereof admitted this 31st day of January, 1913.

(Signed) OSCAR CAIN,  
Attorney for Plaintiff.

Answer. Filed in the U. S. District Court for the Eastern District of Washington. April 14, 1913. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [11]

*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Stipulation [That Northern Pacific Railway Co. is a  
Common Carrier by Railroad, etc.].**

The above numbered and entitled cause coming on for trial, it is hereby agreed and stipulated by and between the plaintiff, by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and Otis B. Kent, Special Assistant United States Attorney, and the defendant, by its attorneys, Cannon, Ferris & Swan, that the said defendant is, and was during all the times specified in the complaint, a common carrier by railroad incorporated, organized and existing and doing business under the laws of the State of Wisconsin; that it is, and was during all of said time, engaged in interstate commerce, and that those of its employees hereinafter named were, and each of them was, during their periods of service hereinafter respectfully defined, engaged in or connected with the movement of an interstate train;

That on January 10, 1912, two employees of the said defendant, to wit, C. W. Hoffman, an engineer, and J. E. Rainey, a fireman, constituting the engine

crew of defendant's engine No. 1507, hauling an extra freight train east-bound from Tacoma, in the State of Washington, to Cle Elum, in the same State, respectively went on duty as such engineer and fireman at 5:30 A. M., on said January 10, 1912; that said employees went off duty temporarily at Auburn, in the State [12] of Washington, at 8:25 A. M., and returned to duty at 10:00 A. M. on said date, at said Auburn; and that said employees thereafter remained on duty as such engineer and fireman until 11:00 P. M., on said date.

That on said January 10, 1912, four additional employees of the said defendant, to wit, R. E. Walsh, a conductor, and Thomas Kilcoyne, A. T. Feilds and J. H. Wilson, trainmen, constituting the train crew of an extra east-bound freight train hauled on said date by defendant's locomotive No. 1507 from Tacoma, in the State of Washington, to Cle Elum, in the same State, respectively went on duty as such conductor and trainmen at 5:00 A. M. on said date; that said employees went off duty temporarily at Auburn, in the said State of Washington, at 8:25 A. M. and returned to duty at said Auburn at 10:00 A. M., on said date; and that said employees thereafter remained on duty as such conductor and trainmen until 10:30 P. M., on said January 10, 1912.

(Signed) FRANCIS A. GARRECHT,

United States Attorney.

(Signed) OTIS B. KENT,

Special Assistant United States Attorney.

(Signed) E. J. CANNON,

CANNON, FERRIS & SWAN,

Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington. April 14, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [13]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
Defendant.

**Opinion.**

FRANCIS A. GARRECHT, U. S. Atty., and  
OTIS B. KENT, Spec. Asst. to U. S. Atty.  
EDWARD J. CANNON, for Defendant.

RUDKIN, District Judge.

This is an action to recover penalties for violation of the Act of Congress of March 4, 1907, entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon" (34 Stat. 1415), commonly known as "the hours of service act." The complaint contains six complaints or causes of action in all, based upon excessive hours of service by the several members of the same train crew. The case has been submitted to the court upon an agreed statement of facts from which the following appears:

The defendant is a common carrier by railroad



engaged in interstate commerce, and the several employees named in the different counts or causes of action were in the employ of the defendant engaged in or in connection with the movement of its trains; on the 10th day of January, 1912, the engineer and fireman [14] of engine No. 1507, hauling an east-bound extra freight train from Tacoma, Washington, went on duty at the hour of five-thirty o'clock A. M. and remained on duty until eleven o'clock P. M. of the same day; the conductor and the remaining members of the crew went on duty at the hour of five o'clock A. M. and remained on duty until the hour of ten-thirty o'clock P. M.; the schedule time out of Tacoma was six o'clock A. M., but the departure of the train was delayed for forty-five minutes by reason of a derailment in the yards; the train arrived at Auburn, eighteen miles east of Tacoma, at eight twenty-five A. M. and was there held for a period of one hour and thirty minutes to permit superior trains to meet and pass; during this period of one hour and thirty minutes the train was placed in charge of an engine foreman or watchman at Auburn and the train crew laid off or released from duty. If the layoff of one hour and thirty minutes at Auburn be included in the hours of service of the crew the law has been transgressed, but if excluded the time of actual service falls within the sixteen-hour period limited by law. The sole question presented for decision is, therefore, does a definite layoff or release from duty for a period of one hour and thirty minutes, under the circumstances stated, break the continuity of the service within the mean-

ing of the law? I am of opinion that it does not. In the case of *United States vs. Chicago, Milwaukee & P. S. Railway Company*, 197 Fed. 624, I held that a layoff of from thirty to forty-five minutes for breakfast and of about one hour each for the midday and evening meals did not break the continuity of the service. I further held in the same case that an indefinite layoff of three hours while the train crew was awaiting the arrival of a helper engine at a small way station did not break the continuity of the service. [15] This decision was cited with apparent approval in the case of *Mo. K. & T. Ry. Co. vs. United States*, 231 U. S. 112. That case, it seems to me, is controlling here. The purpose of the statute is plain and it must be so construed as to promote its policy. The hours of service of railway trainmen are long at best, leaving only eight hours for rest and recreation, and if this brief period can be broken into fragments the purpose and policy of the law will be entirely frustrated. If a train crew may be laid off for an hour and a half at one point to suit the convenience or necessities of the company, it may be laid off for a like period at another and the members of the crew thus wholly deprived of any substantial period for either sleep or rest. If this crew had not been released from duty at Auburn, the members would have been compelled to remain idle until the time of departure arrived, and the release for the brief period allowed by the company permitted them to do little else. The release was of no benefit to the crew and could not subserve any substantial purpose except to obviate the penalty im-

posed by law. Perhaps it cannot be said as a matter of law in all cases whether a release from duty for a fixed period of time will or will not be sufficient to break the continuity of the service. No doubt in extreme cases the Court may declare as a matter of law that a given period is so short as not to break the continuity of the service, or that another period is so long as to break the continuity of the service, but between these two extremes there is a twilight zone where the question becomes a mixed one of law and fact. This case, however, has been submitted to the Court for decision and whatever inferences are to be drawn from the admitted facts must be drawn by the Court, and under the admitted facts I am of opinion that the plain spirit and policy of the law has been [16] violated. I therefore adjudge the defendant guilty on each count or cause of action and impose a penalty of one hundred dollars and costs for each violation.

Let judgment be entered accordingly.

[Endorsements]: Opinion. Filed in the U. S. District Court, Eastern District of Washington. April 21, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [17]



*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,

a Corporation,

Defendant.

### **Judgment.**

The above-entitled cause having come on for trial on the 20th day of April, 1914, plaintiff appearing by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and Otis B. Kent, Special Assistant United States Attorney, and the defendant appearing by E. J. Cannon, Esquire, its attorney, and trial by jury having been waived by the parties hereto, the case was submitted to the Court upon an agreed statement of facts, and briefs filed on behalf of the parties hereto; and the Court having listened to arguments of counsel for the respective parties and having taken the matter under advisement, and having filed its opinion finding the defendant guilty as charged in the complaint herein, it is, therefore,

ORDERED and ADJUDGED that the defendant, Northern Pacific Railway Company, be, and it is hereby, fined in the sum of Six Hundred Dollars (\$600.00), being One Hundred Dollars (\$100.00) for each cause of action set forth in the complaint; and it is further

ORDERED and ADJUDGED that the plaintiff, United States of America, do have and recover of and from the defendant, [18] Northern Pacific Railway Company, its costs and disbursements herein incurred, taxed by the clerk in the sum of \$37.15.

Done in open court this 2d day of May, 1914.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Judgment. Filed in the U. S. District Court for the Eastern District of Washington. May 2, 1914. W. H. Hare, Clerk. [19]

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Notice of Filing Defendant's Proposed Bill of  
Exceptions.**

To the Above-named Plaintiff, and to Messrs. Francis A. Garrecht, United States District Attorney, and Otis B. Kent, Special Assistant United States Attorney:

You and each of you are hereby notified that on the 8th day of May, 1914, the above-named defendant filed in the office of the clerk of the above-entitled court its proposed bill of exceptions of said

cause, for use upon writ of error of said cause to the Circuit Court of Appeals, a copy of which proposed bill of exceptions is herewith served upon you.

(Signed) EDWARD J. CANNON,  
Attorney for Defendant.

[Endorsements]: Notice of Filing Proposed Bill of Exceptions by Defendant.

Due service of within notice by receipt of a true copy thereof admitted this 8th day of May, 1914.

(Signed) F. A. GARRECHT,  
Attorney for Plaintiff.

Filed in the U. S. District Court for the Eastern District of Washington. May 8, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [20]

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant,

**Stipulation [Waiving Trial by Jury].**

IT IS HEREBY STIPULATED and AGREED by and between the parties named in the above-entitled action that the issues of fact in the above-entitled cause may be tried and determined by the Court without the intervention of a jury, and a jury

is hereby expressly waived by both parties.

This stipulation is made pursuant to section 649 of the Revised Statutes of the United States.

(Sgd.) FRANCIS A. GARRECHT,

(Sgd.) OTIS B. KENT,

Attorneys for Plaintiff.

EDWARD J. CANNON,

Attorney for Defendant.

[Endorsements]: Stipulation Waiving Trial by Jury. Filed April 15, 1914. W. H. Hare, Clerk. By F. C. Nash, Deputy. [20½]

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*In the District Court of the United States for the Eastern District of Washington.*

No. 1483.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,

Defendant.

**Bill of Exceptions.**

Be it remembered that the above-entitled cause came on regularly for trial in the above-entitled court on Wednesday, April 15, 1914, before Honorable Frank H. Rudkin, presiding Judge, plaintiff appearing by Francis A. Garrecht, United States District Attorney, and Otis B. Kent, Special Assistant United States Attorney, and the defendant appearing by Edward J. Cannon, whereupon the following proceedings were had.

The following stipulation signed by the parties and filed herein was presented to the Court, to wit:

“The above numbered and entitled cause coming on for trial, it is hereby agreed and stipulated by and between the plaintiff, by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and Otis B. Kent, Special Assistant United States Attorney, and the defendant, by its attorneys, Cannon, Ferris & Swan, that the said defendant is, and was during all the time specified in the complaint, a common carrier by railroad incorporated, organized, existing and doing business under the laws of the State of Wisconsin; that it is, and was during all of said time, engaged in interstate commerce, and that those of its employees hereinafter named were, and each of them was, during their periods of service hereinafter respectively defined, engaged in or connected with the movement of an interstate train;

That on January 10, 1912, two employees of the said defendant, to wit: C. W. Hoffman, an engineer, and J. E. Rainey, a fireman, constituting the engine crew of defendant's engine No. 1507, hauling an extra [21] freight train east-bound from Tacoma, in the State of Washington, to Cle Elum, in the same State, respectively went on duty as such engineer and fireman at 5:30 A. M. on said January 10, 1912; that said employees went off duty temporarily at Auburn, in the State of Washington, at 8:25 A. M., and returned to duty at 10:00 A. M., on said date, at said Auburn; and that said employees thereafter remained on duty as such engineer and fireman until



11:00 P. M., on said date;

That on said January 10, 1912, four additional employees of the said defendant, to wit, R. E. Walsh, a conductor, and Thomas Kilcoyne, A. T. Fields and J. H. Wilson, trainmen, constituting the train crew of an extra east-bound freight hauled on said date by defendant's locomotive No. 1507 from Tacoma, in the State of Washington, to Cle Elum, in the same State, respectively went on duty as such conductor and trainmen at 5:00 A. M. on said date; that said employees went off duty temporarily at Auburn, in the said State of Washington, at 8:25 A. M., and returned to duty at said Auburn at 10:00 A. M., on said date; and that said employees thereafter remained on duty as such conductor and trainmen until 10:30 P. M., on said January 10, 1912."

Whereupon the following proceedings were had:  
"Wednesday, April 15, 1914, 1:30 o'clock P. M.

The proceedings were had:

Mr. CANNON.—I might say in regard to this hours of service law which we are to take up just now, I think, both of us are anxious to do what is right in the matter, and if there is any violation it is an innocent one, and we just want to prove how it came that that order was issued, and that the order was for a definite time of an hour and a half, that is all, and then if the Court would like it, I would be much pleased to submit a brief, and you do the same.

Mr. KENT.—That is all right.

Mr. CANNON.—So that we won't take your time to argue the proposition here this afternoon.

The COURT.—It is agreed that they were laid off definitely.

Mr. CANNON.—No, the agreement is not that they were laid off definitely. The agreement is that they had an hour and a half, but I think the Government doubts us a little on that, as to whether we agreed definitely to lay them off for an hour and a half and that is the point that I brought witnesses here to-day to testify to. [22]

The COURT.—Very well; have your witnesses sworn.

(Witnesses were sworn.)

Mr. KENT.—Before they are put on the stand, your Honor, this is a question the Commission is anxious to have decided. There is a doubt in my mind as to whether or not the decision in the Supreme Court in the Santa Fe case is controlling herein.

The COURT.—That would be a question of law that will come up on the testimony.

Mr. KENT.—The only point that I make is, after consultation with Mr. Garrecht, we are very strongly predisposed to concede that the layoff was for a definite period in order to have the case tested out; and the burden would be upon Mr. Cannon, I believe. Am I right in that, Mr. Cannon?

Mr. CANNON.—I think the burden in a criminal case is always on the Government.

Mr. KENT.—Yes, but in this particular case you are seeking to bring the defendant within the exception, created by the proviso, and to that extent the burden would be upon you.

The COURT.—I suppose there is a denial of the allegations of the complaint.

Mr. KENT.—No, we have stipulated fully as to

the facts; that is, that the men went on duty at a certain time, that they were released at a certain time, that they remained on duty until a certain time when they were definitely released. The only point is that if Mr. Cannon is enabled to show that this release was definite, the case would fail and we would lose the decision.

Mr. CANNON.—In other words, I would confess and avoid then?

Mr. KENT.—Yes.

Mr. CANNON.—Then, why don't you do that? The witness will testify and he has his record here, that it was a definite release for an hour and a half. Now, why not permit it to stand just that way and then you and I file our briefs and then whichever one prevails will give the other one ample time to consider whether or not the question ought to be taken to the court of appeals.

Mr. KENT.—What do you think about that, Mr. Garrecht?

Mr. GARRECHT.—That would present the question just the same, I would think. [23]

Mr. KENT.—I think so. As a matter of fact, I would like to make an oral argument on it. In other words, I believe if the testimony of these witnesses should establish to your satisfaction that the release was for a definite period, then we could get the benefit of your judgment in the matter.

Mr. CANNON.—I will stipulate that that is the fact.

The COURT.—Very well, if that stipulation is



entered into, you can just put another paragraph on your stipulation.

Mr. CANNON.—Suppose we put this stipulation in, that such release was for a definite period of an hour and a half, which period was fixed at the time the crew was released from service and the train turned over to the engine watchman.

Mr. KENT.—In order properly to conserve the rights of the Government. Of course, you understand, your Honor, that the Government does not care anything about the penalty; we are very much more concerned in the adjudication of the question than we are in the penalty; I think we can, perhaps, show that the decision of the Supreme Court in the Santa Fe case is really not controlling here, and that your decision in the Puget Sound case is not only equitable, but that you might have gone much further. If you recall in that decision you based your judgment in favor of the Government upon the fact that the interval of three hours—although it eventually was three hours—was not pre-determined to be three hours at the time the men were excused from duty. I think that we can show to your satisfaction that the Supreme Court decision is not controlling here and in fact has no application here; but, on the other hand, if agreeable to you, I will leave it to Mr. Cannon—do you really believe, Mr. Cannon, that you can prove by your witnesses, assuming the burden of proof as I believe you would have to do, that this release was for a definite period?

Mr. CANNON.—That is what my witnesses tell me, and they are here, and they are not trying to

cover anything up.

Mr. KENT.—No, we do not think that, but in your judgment will they testify to it?

The COURT.—Were they laid off by a written order?

Mr. CANNON.—I am perfectly willing to show the record just as it was.

The COURT.—Was it by a written order?

Mr. J. A. MILLER (*Trick* despatcher of the Northern Pacific).—It was an order sent by [24] telephone, but no copy made thereof. At that time we had not got so far as to preserve copies of an order releasing from duty, but we made a record upon the train sheet at the time that the order was issued.

Mr. KENT.—A notation on the train sheet?

Mr. J. A. MILLER.—Yes, sir.

Mr. KENT.—And you would state under oath now, if we should ask you, that at the time these men were relieved they were told they would be definitely relieved for one hour and thirty minutes.

Mr. J. A. MILLER.—I would. My notation on the train sheet is definite.

Mr. KENT.—Of course, you understand that would not be the best evidence, because the latter should be introduced.

The COURT.—The only evidence in existence is the best evidence now.

Mr. CANNON.—It is the only evidence; we have different plans now that I think are much better; we have a regular order blank and we check it up; we have a double check.

Mr. KENT.—Will your other witness testify to the same thing?

Mr. CANNON.—Mr. Graves was not personally there.

Mr. KENT.—Your testimony would be to that effect, that it was for a definite period?

The OTHER WITNESS.—Yes, sir.

Mr. CANNON.—Not only that, but I have the written statement of the two trainmen themselves that that is the fact.

Mr. KENT.—That they were released and at the time they went off duty they were told they need not report for duty again until one hour and thirty or thirty-five minutes?

Mr. CANNON.—Yes, sir.

Mr. KENT.—Will you show in that stipulation that the release was for the purpose of meeting a train?

Mr. CANNON.—This is the fact that we will establish: The train was ordered to leave Tacoma at six A. M., but was delayed at that point forty-five minutes waiting for engine which had been delayed between roundhouse and yard by derailment of yard cut and therefore did not reach Auburn until 8:25 A. M., and it was then seen by the dispatcher, the witness here, that train would sustain a long delay at Auburn meeting superior trains which were [25] No. 603, No. 41, No. 257, and let No. 4 pass and to take advantage of a release period, the crew was instructed, on arrival at Auburn, that they were relieved from duty for one hour and thirty minutes, so that the train could, if possible, make Ellensburg

within the allowed time.

Mr. KENT.—And you are perfectly willing to show in that stipulation at the time we concede it was for a definite period that the purpose of this was for meeting a train?

The COURT.—Why not make that letter a part of the stipulation?

Mr. CANNON.—That is why I read it. Those are the facts.

Mr. KENT.—Under those circumstances, if your Honor please, I think that that is a good way, because it will enable us to get an opinion, and the commission would like an expression of your opinion on that point.

Mr. CANNON.—I would like also to submit a written brief, and his Honor has no time now to consider our argument anyway, and I could not finish mine before two o'clock, possibly, and you submit your brief, taking such time as you see fit.

Mr. KENT.—When would it be convenient for you?

Mr. CANNON.—I can get my brief up possibly in two days.

Mr. KENT.—Would you care for oral arguments on it, your Honor?

The COURT.—I do not think so.

Mr. KENT.—Just submit it on the brief.

The COURT.—Yes.

Mr. KENT.—We will submit those briefs, then, say Friday?

The COURT.—In fact, I do not think I care for any argument. I am ready to decide it now. I

think it is controlled by the Milwaukee case.

Mr. CANNON.—I would rather give you my reasons for thinking it is not controlled by that case, and I will give you my reasons inside of two days.

The COURT.—I will give you mine within half an hour afterwards.

Mr. KENT.—We will do that, your Honor.

Mr. CANNON.—We will consider that this case may rest right here. [26]

The COURT.—I do not know what would constitute a break in the continuity, whether it presents a question of law or a question of facts. I know I stated in the Milwaukee case if the parties had been laid off definitely for a period of three hours at a place where they could rest, in my opinion it would break the continuity of the service.

Mr. CANNON.—Without question at Auburn they had ample time and opportunity to rest.

The COURT.—In the Milwaukee case there were two hours for rest. That did not break the continuity of the service.

Mr. CANNON.—I do not think they had an opportunity to rest.

The COURT.—They could do whatever they wanted to do."

Mr. CANNON.—Both parties having rested the defendant now challenges the sufficiency of the evidence to support a judgment in favor of the plaintiff, and moves the Court to dismiss the action.

The COURT.—The motion will be denied.

Mr. CANNON.—Defendant excepts and exception is allowed.



Whereupon and thereafter counsel for the respective parties submitted briefs and the Court took said case under advisement, and thereafter and on the 21st day of April, 1914, the Court filed its opinion herein in favor of the plaintiff and against the defendant for a penalty of One Hundred Dollars (\$100.00) on each of the six counts contained in plaintiff's complaint; and thereafter and on the 2d day of May, 1914, judgment was entered in accordance with said opinion for the sum of Six Hundred Dollars (\$600.00), being One Hundred Dollars (\$100.00) on each of the causes of action set forth in the complaint, and the further sum of Thirty-Seven and 15/100 Dollars (\$37.15) costs; and now in furtherance of justice and that right may be done the defendant presents the foregoing as its full Bill of Exceptions in this cause and prays the same may be settled and allowed and signed and certified by the Judge as provided by law and the practice of this Honorable Court.

(Signed) EDWARD J. CANNON,  
Attorney for Defendant. [27]

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*In the District Court of the United States for the  
Eastern District of Washington.*

No. 1483.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
Defendant.

**Certificate and Order Allowing and Settling Bill of Exceptions.**

This cause came on duly and regularly for hearing before the court on the 27th day of May, 1914, upon application of the defendant for the settling and certifying of its proposed bill of exceptions lately filed herein, and the said proposed bill of exceptions having been presented, served and filed within the time allowed by law, and the plaintiff having proposed no amendments to said bill of exceptions, and the time for serving or filing any proposed amendments to said bill of exceptions having expired,—

Now, therefore, on motion of attorneys for defendant, it is **ORDERED**, that said proposed bill of exceptions heretofore filed by the defendant in this cause, is hereby approved, allowed and settled as the true, full and correct bill of exceptions in said cause, containing in full all the evidence and proceedings taken and had upon the trial of said cause, and that the same as so settled and allowed be now and here certified accordingly by the undersigned Judge of this court, who presided at the trial of said cause, and that the bill of exceptions when so certified be filed herein by the clerk. [28]

The foregoing bill of exceptions is full, true and correct in all respects, and it is hereby approved, allowed and settled, and made a part of the record herein.

Done in open court this 27th day of May, 1914.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsements]: Service of within Proposed Bill of Exceptions by receipt of a true copy thereof admitted this 8th day of May, 1914.

(Signed) F. A. GARRECHT,  
Attorney for Plaintiff.

Bill of Exceptions. Received May 8th, 1914, and filed, after being settled and allowed by the Court, May 27, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [29]

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*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Assignments of Error.**

Comes now the above-named defendant Northern Pacific Railway Company, and makes and files the following Assignments of Error in said cause, which said defendant will rely upon in the United States Circuit Court of Appeals for the Ninth Judicial Circuit for relief from and reversal of the judgment entered in this cause in the court below, to wit:

I.

The Court erred in holding and deciding that lay-off of one hour and thirty minutes did not break the continuity of the service.



II.

The Court erred in including in the hours of service the one hour and thirty minutes when the train crew in question were laid off and released from duty.

III.

The Court erred in holding and deciding that under the admitted facts the defendant had violated the act commonly known as the "Hours of Service Act" (34 Stat. 1415).

IV.

The Court erred in holding and deciding that [30] the defendant was guilty on each count or cause of action or either or any of them.

V.

The Court erred in imposing a penalty of One Hundred Dollars and costs for each alleged violation or for either or any of them.

VI.

The Court erred in entering judgment against the defendant for the penalty of \$100.00 on each count or cause of action and for costs, or for any other sum or amount whatsoever, for the reason that under the admitted facts it conclusively appears that the defendant is not guilty of a violation of the Act commonly known as the "Hours of Service Act" (34 Stat. 1415) upon any of the counts or causes of action or either of them set forth in plaintiff's complaint, to which entry of judgment the defendant excepted and the exception was allowed.

VII.

The Court erred in denying defendant's challenge

to the sufficiency of the evidence to support a judgment made at the close of all the testimony of the case, and in refusing to dismiss the action, for the reason that under the admitted facts it conclusively appears that the defendant is not guilty of a violation of the act commonly known as the "Hours of Service Act" (34 Stat. 1415) upon any of the counts or causes of action, or either of them set forth in plaintiff's complaint, to which ruling the defendant excepted and the exception was allowed.

The defendant duly excepted to the rulings of the Court in the matter of each of the above errors assigned, and hereby and now assigns each and every one of said rulings as error.

(Signed) EDWARD J. CANNON,  
GEO. M. FERRIS,  
CHAS. E. SWAN,

Attorneys for Defendant. [31]

[Endorsements]: Assignment of Errors.

Due service of within Assignment of Errors by receipt of a true copy thereof admitted this 27th day of May, 1914.

(Signed) F. A. GARRECHT,  
Attorney for Plaintiff.

Filed in the United States District Court for the Eastern District of Washington, May 27, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy.  
[31½]

*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Petition for Writ of Error.**

To the Honorable Judges of the United States Circuit Court of Appeals, Ninth Judicial Circuit.

Comes now the above-named defendant Northern Pacific Railway Company, a corporation, by its attorneys, and complains that in the records and proceedings had in said cause, and also in the rendition of the judgment in the above-entitled cause in said United States District Court for the Eastern District of Washington, Northern Division, at the April term thereof, 1914, manifest error hath happened to the great damage of this defendant.

Your petitioner further respectfully shows that it has this day filed herewith its Assignments of Error committed by the Court below in said cause and intended to be urged by your petitioner and plaintiff in error in the prosecution of this, its suit in error.

WHEREFORE, the defendant prays for the allowance of a Writ of Error to the said Circuit Court and for an order fixing the amount of bond for a supersedeas in said cause; and for such other orders and

process as may cause the same [32] to be corrected by the said United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated this 27th day of May, 1914.

(Signed) EDWARD J. CANNON,  
GEO. M. FERRIS,  
CHAS. E. SWAN,  
Attorneys for Defendant.

[Endorsements]: Petition for Writ of Error.

Due service of within petition by receipt of a true copy thereof admitted this 27th day of May, 1914.

(Signed) F. A. GARRECHT,  
Attorney for Plaintiff.

Filed in the U. S. District Court for the Eastern District of Washington. May 27, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [33]

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*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Order Allowing Writ of Error (and Fixing Amount  
of Bond).**

The defendant Northern Pacific Railway Company, a corporation, having this day filed its petition for a Writ of Error from the decision and judgment

made and rendered herein, to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, together with an Assignment of Errors within due time, and also praying that an order be made fixing the amount of security which the defendant shall give and furnish upon said Writ of Error, and that upon the giving of said security all further proceedings of said court be suspended and stayed until the determination of said Writ of Error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having been this day duly allowed:

Now, therefore, it is ORDERED that upon the said defendant, Northern Pacific Railway Company, filing with the clerk of this court a good and sufficient bond in the sum of One Thousand (\$1,000) Dollars, payable to the United States of America, plaintiff in the above-entitled cause to the effect that if said defendant Northern Pacific Railway Company, and plaintiff in error, shall prosecute [34] the said Writ of Error to effect, and answer all damages and costs, if it fails to make its plea good, then the said obligation to be void, otherwise to remain in full force and effect, the said bond to be approved by the Court; that all further proceedings in this suit be, and they are hereby suspended and stayed until the determination of said Writ of Error by the said United States Circuit Court of Appeals.

Dated this 27th day of May, 1914.

(Signed) FRANK H. RUDKIN,  
Judge.



[Endorsements]: Order Allowing Writ of Error and Fixing Amount of Bond.

Due service of within order by receipt of a true copy thereof admitted this 27th day of May, 1914.

(Signed) F. A. GARRECHT,  
Attorney for Plaintiff.

Filed in the U. S. District Court for the Eastern District of Washington, May 27, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [35]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Writ of Error [Original].**

The President of the United States, to the Honorable Judges of the District Court of the United States, for the Eastern District of Washington, Northern Division, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the Northern Pacific Railway Company, a corporation, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened to the great damage of the said Northern



Pacific Railway Company, plaintiff in error, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same at the City of San Francisco, in the State of California, [36] on the 26th day of June next, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, the 27th day of May, in the year of our Lord One Thousand Nine Hundred and Fourteen.

[Seal]

W. H. HARE,

Clerk of the United States District Court for the Eastern District of Washington, Northern Division.

By Frank C. Nash,

Deputy Clerk, U. S. District Court, Eastern District of Washington. [37]

[Endorsed]: No. 1483. In the U. S. District Court, District of Eastern Washington, Northern

Division. United States of America, Plaintiff, vs. Northern Pacific Railway Company, a Corporation, Defendant. Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington. May 27, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

Due service of within Writ of Error by receipt of a true copy thereof admitted this 27th day of May, '14.

F. A. GARRECHT,  
Attorney for Plaintiff.

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*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, Northern Pacific Railway Company, a corporation, as principal, and the National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York and authorized to do business as a surety company in the State of Washington, as surety, are held and firmly bound unto the United States of America in the full and just sum of One Thousand (\$1000) Dol-

lars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves and our and each of our successors or assigns, heirs, administrators, executors and legal representatives jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of May, 1914.

WHEREAS, lately, in the District Court of the United States for the Eastern District of Washington, Northern Division, in an action pending in said court between the United States of America as plaintiff and the said Northern Pacific Railway Company, a corporation as [38] defendant, a judgment was rendered in favor of said plaintiff and against said defendant for the sum of Six Hundred (\$600) Dollars, and costs of action, and the said Northern Pacific Railway Company has obtained from said court a Writ of Error to reverse said judgment in the aforesaid action and a Citation directed to the said above-named plaintiff, citing and admonishing it to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THEREFORE, the condition of the obligation is such that if the said Northern Pacific Railway Company, plaintiff in error, shall prosecute its said Writ of Error to effect, and answer all damages and costs, if it fails to make good its plea, then this

obligation shall be void; otherwise to remain in full force and effect.

(Signed)    NORTHERN PACIFIC RAIL-  
WAY COMPANY.

By EDWARD J. CANNON,  
Its Attorney.

(Signed)    NATIONAL SURETY COM-  
PANY,

By JAMES A. BROWN,  
Resident Vice-president.

[Seal]      Attest: By S. A. MITCHELL,  
Resident Assistant Secretary.

The above and foregoing bond approved this 27th day of May, 1914.

(Signed)    FRANK H. RUDKIN,  
United States District Judge.    [39]

[Endorsements]: Bond on Writ of Error.

Due service of the within Bond on Writ of Error by receipt of a true copy thereof admitted this 27th day of May, 1914.

(Signed)    F. A. GARRECHT,  
Attorney for Plaintiff.

Filed in the U. S. District Court for the Eastern District of Washington, May 27, 1914.    W. H. Hare, Clerk.    By Frank C. Nash, Deputy.    [40]

*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to the United  
States of America and to Francis A. Garrecht  
and Otis B. Kent, Your Attorneys, Greeting:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals for the Ninth Circuit to be held at San Fran-  
cisco, in the State of California, within thirty (30)  
days from the date of this writ, pursuant to a Writ  
of Error filed in the Clerk's office of the District  
Court of the United States for the Eastern District  
of Washington, Northern Division, wherein the  
Northern Pacific Railway Company, a Corporation,  
is plaintiff in error and you are defendant in error,  
to show cause, if any there be, why judgment in said  
Writ of Error mentioned should not be corrected  
and speedy justice should not be done to the party  
in that behalf.

WITNESS the Honorable EDWARD D.  
WHITE, Chief Justice of the Supreme Court of



United States this 27 day of May, [41] One Thousand Nine Hundred Fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

[Seal]

FRANK H. RUDKIN,  
United States District Judge.

[Endorsed]: No. 1483. In the U. S. District Court, District of Eastern Washington, Northern Division. United States of America, Plaintiff, vs. Northern Pacific Railway Company, a Corporation, Defendant. Citation (on Writ of Error). Filed in the U. S. District Court, Eastern Dist. of Washington. May 27, 1914. Wm. H. Hare, Clerk. Frank C. Nash, Deputy.

Due service of within Citation by receipt of a true copy thereof admitted this 27th day of May, 1914.

F. A. GARRECHT,  
Attorney for Plaintiff. [42].

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*In the District Court of the United States, for the Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Praecipe for Transcript.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the complete

record in the above-entitled case to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error to be perfected to said Court, and include in said transcript the following proceedings, pleadings, papers, records and files, to wit:

1. Complaint.
2. Answer.
3. Stipulation.
4. Opinion.
5. Judgment.
6. Bill of Exceptions and Certificate.
7. Notice of Filing Bill of Exceptions.
8. Assignment of Errors.
9. Petition for Writ of Error.
10. Order Allowing Writ of Error and Fixing Bond.
11. Bond.
12. Citation.
13. Writ of Error.
14. Praecipe for Transcript of Record.
15. Stipulation Waiving Jury Trial.

—and any and all records, entries, pleadings, proceedings, papers, filings necessary or proper to make a complete record upon said writ of error in said cause. Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

(Signed) EDWARD J. CANNON,  
Attorney for Defendant. [43]

[Endorsements]: Praeceptum for Transcript of the Record. Filed in the U. S. District Court for the Eastern District of Washington. May 27, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [44]

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*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Defendant.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing pages, numbered from No. 1 to No. 44, inclusive, constitute, and are a true and correct copy of the record, pleadings, testimony and all proceedings had in said action as called for by the defendant and the plaintiff in error in its praecipe for a transcript of the record herein, as the same remain on file and of record in said District Court, and that the same which I transmit constitute my return to the annexed Writ of Error lodged and filed in my office on the 27th day of May,

1914. I also annex and transmit the original citation in said action.

I further certify that the cost of preparing, and certifying to said record amounts to the sum of \$28.60, and that the same has been paid in full by Cannon, Ferris & Swan, attorneys for defendant and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at the city of [45] Spokane, in the said Eastern District of Washington, Northern Division, in the Ninth Judicial Circuit, this 4th day of June, 1914, and in the Independence of the United States of America, the one hundred and thirty-eighth.

[Seal]

W. H. HARE,

Clerk U. S. District Court for the Eastern District of Washington. [46]

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[Endorsed]: No. 2432. United States Circuit Court of Appeals for the Ninth Circuit. Northern Pacific Railway Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Received and filed June 8, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

